

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES FRANK LOWERY,

Petitioner,

v.

TIMOTHY WENGLER and THE  
ATTORNEY GENERAL OF THE STATE  
OF WASHINGTON,

Respondents.

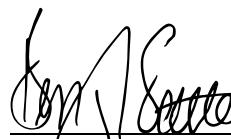
Case No. C08-5302 BHS/KLS

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION AND  
DENYING MOTION FOR  
EVIDENTIARY HEARING  
WITHOUT PREJUDICE

The Court having reviewed the Report and Recommendation (Dkt. 6) of the Hon. Karen L. Strombom, United States Magistrate Judge, Petitioner's objections to the Report and Recommendation (Dkt. 7), Petitioner's Motion for Evidentiary Hearing (Dkt. 7), and the remaining record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation (Dkt. 7);
- (2) The petition (Dkt. # 1) is **TRANSFERRED TO THE NINTH CIRCUIT AS A SECOND OR SUCCESSIVE PETITION.**
- (3) The clerk is directed to send copies of this Order to Petitioner and to the Hon. Karen L. Strombom **AND TO ADMINISTRATIVELY CLOSE THIS FILE.**
- (4) Petitioner's Motion for Evidentiary Hearing (Dkt. 7) is **DENIED without prejudice** pending a decision by the Ninth Circuit as to whether Petitioner may proceed with his petition.

DATED this 23<sup>rd</sup> day of June, 2008.



BENJAMIN H. SETTLE  
United States District Judge

ORDER